UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/277/Add.1
12 March 1995

ENGLISH
Original: SPANISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Ninth periodic reports of States Parties due in 1995

Addendum

NICARAGUA*

[Original: Spanish]
[6 March 1995]

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* The present report combines in a single document the fifth, sixth, seventh, eighth and ninth periodic reports of Nicaragua, due on 17 March 1987, 1989, 1991, 1993 and 1995, respectively.

For the earlier reports submitted by the Government of Nicaragua and the summary records of the meetings at which the Committee considered those reports, see:

Initial report - CERD/C/R.45/Add.3 (CERD/C/SR.504),
Second periodic report - CERD/C/103/Add.1 (CERD/C/SR.638 and 639),
Third periodic report - CERD/C/103/Add.1 and Corr.1 (CERD/C/SR.638 and 639).
Fourth periodic report - CERD/C/128/Add.1 (CERD/C/SR.818)

GE.95-16048 (E)

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Introduction

1. The purpose of the present report by the Government of Nicaragua is to present and analyse the norms established by Nicaraguan legislation since 1986 with the object of protecting the country's ethnic minorities, in accordance with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and, specifically, of the Constitution of Nicaragua promulgated in 1987.

I. GENERAL

2. The Democratic Government of Nicaragua which assumed office on 25 April 1990 bases its legal system and political structure on the Constitution promulgated on 9 January 1987. This Constitution, now in force, incorporates all the provisions emanating from the international conventions for the protection of human rights.

3. The Constitution of Nicaragua contains extensive provisions for the protection of the ethnic communities of the Atlantic Coast region and constituted the basis for the introduction of Act No. 28, which was published in issue No. 238 of the Diario Oficial on 30 October 1987. Act No. 28, also known as the Autonomy Statute, establishes regime of autonomy for the peoples and communities of the Caribbean Coast of Nicaragua. This regime provides for the exercise by the peoples and communities of the Atlantic Coast region of autonomy in matters of regional administration and for their full participation in matters relating to their future (see paras. 11-29 below).

4. Article 8 of the Constitution provides as follows:

> "Article 8. The people of Nicaragua is multi-ethnic in character and forms part of the Central American nation".

Recognition of the multi-ethnicity of our population in a clear reference to the indigenous and Creole populations of the Atlantic Coast region is thus, for the first time in Nicaragua's constitutional history, set forth in the Constitution itself.

5. Pursuant to the fundamental principles of the Convention, article 46 of the Constitution provides as follows:

> "Article 46. All persons shall enjoy within the national territory the protection of the State and recognition of the rights inherent in the human person, unrestricted observance, promotion and protection of human rights, and full observance of the rights proclaimed in the Universal Declaration of Human Rights, in the American Declaration of the Rights and Duties of Man, in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and in the American Convention on Human Rights of the Organization of American States."

6. Article 27 of the Constitution provides as follows:

> "All persons are equal before the law and have an equal right to protection. There shall be no discrimination on grounds of birth, nationality, political views, race, sex, language, religion, opinion, origin or economic or social status. The State shall respect and guarantee the rights recognized in the present Constitution for all persons within its territory and under its jurisdiction."

With regard to the legal status of Nicaraguans, article 29 of the Constitution recognizes the right to freedom of conscience and worship and the right freely to practise or not to practise a religion, on the basis of the broadest spirit of tolerance and liberty. It also establishes the right of everyone to freedom of conscience and thought, which provides the framework for the unrestricted freedom of the press in Nicaragua, since no one may be obliged to declare his ideology, his faith or his beliefs.

7. The Nicaraguan State does not give official status to any religion and thus allows a broad margin of tolerance for the various religious groups in the country. Article 14 of the Constitution states: "The State has no official religion". Furthermore, article 29 of the Constitution provides as follows:

> "Article 29. Everyone has the right to freedom of conscience and thought and to practise or not to practise a religion. No one may be subjected to measures of coercion that may impair these rights nor be obliged to declare his faith, ideology or beliefs."

8. The following provisions are set forth in positive law as contained in the Criminal Code:

> "Article 549. Any person who commits acts or prescribes measures intended to destroy an ethnic or religious group wholly or partially, such as physical attacks on its members, mass deportations, forced removal of children or adults to other groups, imposition of conditions that make it difficult for them to survive, or operations or practices aimed at preventing them from reproducing, shall be guilty of the crime of genocide and shall be punished by imprisonment for 15 to 20 years.
>
> "Article 550. The organization of groups which have as their object the commission of the crime of genocide and public incitement thereto shall be punishable by imprisonment for five to eight years."

9. The Autonomy Statute of the Atlantic Coast Regions of Nicaragua was promulgated having regard to the fact that the Atlantic Coast region comprises 50 per cent of the territory of Nicaragua while its inhabitants account for 9.5 per cent of the country's total population. Of these, 182,000 are Mestizos, who speak Spanish; 75,000 are Misquitos, who have their own language; 26,000 are English-speaking Creoles; 9,000 are Sumos, who have their own language; 1,750 are Garifonas, most of whom have lost their language; and 850 are Ramas, of whom only 35 still speak their own language. 1/

10. The Autonomy Statute recognizes and strengthens ethnic identity; respects the cultural specificity of the communities of the Atlantic Coast region; preserves their history; recognizes the right of ownership of communal land;

rejects any form of discrimination; recognizes religious freedom; grants to the region the power to legislate in matters of taxation and land division; provides for the introduction of legislation relating to natural resources; and grants the autonomous regions powers of self-government (see paras. 11-29 below).

11. Upon the installation of the democratic Government of Mrs. Violeta Barrios de Chamorro in April 1990, and to express a pledge to the indigenous peoples and ethnic communities of the Atlantic Coast region, the Nicaraguan Institute for the Development of the Autonomous Regions (INDERA) was set up as a specialized body for the purpose of dealing with the special situation in the regions and to promote sustained action for their improvement and development by the central Government within the framework of the Autonomy Statute. Since its establishment, INDERA has been organized and directed by leading personalities and professionals of the region (indigenous persons and Creoles) concerned with the interests and priority needs of the two autonomous regions, which thus ensures for these persons the right to hold public offices in the Government of Nicaragua on the same basis as other Nicaraguans.

II. INFORMATION IN RELATION TO ARTICLES 2 TO 7: Provisions which give effect to the provisions of the Convention

Article 2

12. The present Constitution was promulgated in the year 1987, which also saw the promulgation of the Autonomy Statute for the Atlantic Coast Regions of Nicaragua, Act No. 28, published in La Gaceta, Diario Oficial, No. 238 of 30 October 1987. However, the provisions of Nicaragua's criminal and civil law referred to in the fourth periodic report have not been amended and remain in force. They will therefore not be examined in the present report, which will focus instead on the changes to which the present Constitution and the Autonomy Statute for the Atlantic Coast Regions of Nicaragua have given rise.

13. The guarantee of equality for all Nicaraguans is expressly stated in Title IV of the Constitution which, on the matter of the rights, duties and guarantees of the Nicaraguan people, provides as follows:

> "Article 27. All persons are equal before the law and are entitled to equal protection. There shall be no discrimination on grounds of birth, nationality, political views, race, sex, language, religion, opinion, origin or economic or social status ..."

14. Furthermore, article 46 of the Constitution provides:

> "Article 46. Everyone shall enjoy within the national territory the protection of the State and recognition of the rights inherent in the human person, unrestricted observance, promotion and protection of human rights ..."

15. The Constitution of Nicaragua expresses, in articles 3 and 5, opposition to all forms of colonial domination and exploitation and solidarity with all peoples combating oppression and discrimination. These articles also guarantee the participation of all Nicaraguans and of their organizations in

the country's economic, political and social affairs, without any discrimination. They also condemn racism and colonialism and any form of subordination of one State to another is rejected.

16. The Constitution of Nicaragua sets forth the rights of the Atlantic Coast communities. These include the right to protection against discrimination and to protection of the languages and culture of the communities, as well as their own forms of civil organization and government; and protection of their system of law, their natural resources and their land. These matters are dealt with in articles 8, 11, 49, 89, 90, 91, 121, 180 and 181. 2/

17. Owing to the particular characteristics of the peoples and communities of the Atlantic Coast region of Nicaragua and the geography of this region, there are a number of ethnic, cultural, linguistic and social differences between this region and the rest of Nicaragua. Its awareness of these differences has led the Government of Nicaragua to introduce measures such as article 89, which provides:

> "Article 89. The communities of the Atlantic Coast region form an inseparable part of the Nicaraguan people and, as such, enjoy the same rights and have the same obligations."

18. The State has sought to prevent discrimination through policies favouring equal treatment for persons having equal status and to ensure that the difficult circumstances in which some people live are taken into account in formulating policies, with a view to eliminating disadvantages. Accordingly, the following principle has been included in the Constitution:

> "Article 91. The State has an obligation to introduce legislation for the promotion of measures to ensure that no Nicaraguan is subjected to discrimination on grounds of language, culture or origin."

19. In the light of the Constitutional guarantees given to the communities of the Atlantic Coast region, the Autonomy Statute was introduced. This Statute provides for the establishment of two Autonomous Regions in the Atlantic Coast region of Nicaragua. As an effective measure for the development of autonomy, the President of the Supreme Electoral Council, acting pursuant to the electoral law in force, 3/ established the first Regional Council on 4 May 1990 and the second Regional Council on 4 May 1994.

20. Since 1990, the Government of Nicaragua and the two regional councils have been working to promote the autonomy of the Atlantic Coast regions of Nicaragua. The Government of the Autonomous Regions is organized, pursuant to article 15 of the Autonomy Statute, as follows:

1. The Regional Council
2. The Regional Coordinator
3. The municipal and communal authorities
4. The municipal subdivisions.

21. Article 16 institutes the Regional Council and the Regional Coordinator as the senior authorities of the Autonomous Regions. Articles 19 and 20 provide that each Regional Council shall be composed of 45 members elected by

a ballot of the people, emphasis being placed on representation of every ethnic group in the region. The representatives to the National Assembly of each Autonomous Region serve on the Regional Council with the right to participate in its deliberations and to vote.

22. The powers and functions of the Regional Council are specified in article 23. Its most important powers include that of electing and replacing the Regional Coordinator, who must be elected from among the members of the Council. The Regional Coordinator performs executive functions for the region. The Regional Council elects its Executive Board from among its members. It also receives and approves the resignation of members of the Board and prepares and adopts its internal rules (art. 23, paras. 12, 13 and 15). The Regional Council may request the submission of reports by officials appointed by the Central Government and located in the Autonomous Regions, under article 23, paragraph 11, which provides: "shall request written or oral reports, as appropriate, from officials of the ministries and State agencies functioning in the region".

23. The more important functions of the Regional Council include the preparation of draft legislation on rational use and conservation of the region's natural resources (section 10). This section, pursuant to article 9 of the Statute, calls for the conclusion of agreements between the regional government and the central government on rational exploitation of natural resources. Another function of the Regional Council is the formulation of a regional tax plan aimed at broadening the scope of taxation under article 8, paragraph 9, of the Statute, which provides for the levying of regional taxes under the relevant legislation.

24. The Statute also provides for recognition of rights in communal land in the region in accordance with article 89, paragraph 3, of the Constitution. Communal land has formed part of the economic and cultural development of the indigenous peoples of the region and recognition of these rights in the Constitution therefore supports the maintenance of the claims to such land made by the communities of the Atlantic Coast region on cultural grounds.

25. Another function of the Regional Councils is the preparation of draft regional legislation on the demarcation and organization of municipalities. A further function is the settlement of boundary disputes between communities of the region concerned. A draft bill on municipal demarcation has to be drawn up and submitted, pursuant to article 7 of the Autonomy Statute:

> "Article 7. The territory of each autonomous region shall be divided for administrative purposes into municipalities, which shall be set up as soon as possible and be consistent with local traditions. The municipalities shall be governed by the relevant legislation. The administrative sub-division of the municipalities shall be instituted and organized by the Regional Council concerned, in accordance with its traditions."

26. Article 28, paragraph 4, of the Statute provides that the Regional Council may: "Perform any activities necessary in the interest and contributing to the welfare and development of the region". This provision gives the Regional Council's Executive Board broad discretion in the matter

of legislation. In practical terms, the Regional Council can legislate, within its jurisdiction, on many matters of regional interest. Furthermore, two thirds of the members of the two Regional Councils (Northern and Southern Autonomous Atlantic Regions) may jointly propose amendments to the Autonomy Statute (art. 38).

27. The Regional Coordinator performs executive functions for the region. He is elected from among the members of the Regional Council, which may also replace him (art. 23, para. 8). Article 30 of the Autonomy Statute specifies the functions of the Regional Coordinator. The latter, as representative of and executive for the region, organizes and directs the region's executive activities and appoints its administrative officers (art. 30, paras. 1 to 3).

28. The Regional Coordinator also carries out and sees to the implementation of the Regional Council's policies and ordinances. He administers the special fund for social development and progress, in accordance with the policy laid down by and under the supervision of the Regional Council, as provided in article 8, paragraph 6. The Regional Coordinator represents the region vis-à-vis the national authorities and his office is compatible with that of a representative of the President of the Republic in the region, as provided in article 30, paragraph 4.

Article 3

29. The constitution of Nicaragua condemns all forms of racial segregation and apartheid, as being contrary to the freedoms guaranteed by the fundamental law of the Republic.

30. From 1986 until the inauguration of Nelson Mandela's Government, the Nicaraguan authorities maintained their decision to have no relations of any kind with the former Pretoria regime, pursuant to the resolutions of the United Nations. Nicaraguan delegations repeatedly condemned the apartheid regime in various bodies of the United Nations and the Movement of the Non-Aligned Countries.

Article 4

31. The following provisions, conforming with article 4, paragraphs (a), (b) and (c), of the Convention are enshrined in the Constitution of Nicaragua:

> "Article 53. The right of peaceful assembly shall be recognized; prior permission shall not be required for the exercise of this right.
>
> "Article 54. The right of association, demonstration and public mobilization shall be recognized in accordance with the law."

Peaceful assembly for lawful purposes is protected by the Constitution in Nicaragua, as is freedom of expression.

> "Article 30. Nicaraguans shall have the right to express their thoughts freely in public or in private, individually or collectively, orally, in writing or through any other medium."

32. The forms of social organization in the Caribbean Region of Nicaragua are a reflection of the situation in the Region. The civil associations formed by members of minority groups have traditionally been the means whereby these groups have obtained redress for social grievances. The Constitution provides for protection of the particular forms of civil and trade-union organizations of the inhabitants of the Atlantic Coast region in article 49:

> "Article 49. In Nicaragua ... the communities of the Atlantic Coast region shall have the right to establish organizations ... without any form of discrimination, in order to realize their aspirations in accordance with their own interests and to join in the building of a new society ..."

33. The customary law of the communities of the Atlantic Coast Region is now being openly applied in conjunction with national positive law.

> "Article 89. ... The communities of the Atlantic Coast region shall have the right ... to establish their own forms of social organization and to administer their local affairs in accordance with their traditions ..."

34. Recognition by the State of the existence of indigenous customary law in the Statute on the Autonomy of the Autonomous Regions of Nicaragua, pursuant to the Constitution, is based on the subsistence of the oral tradition which has existed among the indigenous peoples since time immemorial and in accordance with which justice has been administered in these communities.

35. When article 180 mentions historical and cultural traditions it is referring directly to what we understand as custom; this article is therefore applicable to the customary law of the indigenous communities of the Atlantic Coast region.

> "Article 180 of the Constitution. The communities of the Atlantic Coast region shall have the right to live and develop in the framework of forms of social organization compatible with their historical and cultural traditions."

36. Article 18 of the Statute on the Autonomy of the Autonomous Regions of Nicaragua recognizes the juridical traditions of the communities of the Atlantic Coast region and stipulates:

> "Article 18. The administration of justice in the Autonomous Regions shall be governed by special regulations which shall reflect the inherent cultural particularities of the communities of the Atlantic Coast region."

37. The leaders that have emerged from the social fabric of the communities have traditionally become their authorities, hence the importance of recognition by the Constitution that the Atlantic Coast communities have the right to elect their representatives freely in accordance with their traditions.

Article 5

38. The Constitution of Nicaragua prohibits the practice of racial discrimination in any form, pursuant to article 5 of the Convention.

> "Article 25, paragraph 3 of the Constitution. Everyone shall have the right to recognition as a person having legal capacity."

The Civil Code of Nicaragua provides:

> "Article 2. All human beings, irrespective of their age, sex, race or status, are natural persons.
>
> "Article 5. The legal existence of a person commences at birth."

39. The right to nationality is guaranteed at the constitutional level; the relevant parts of the Constitution provides as follows:

> "Article 15. Nicaraguans may be nationals or nationalized.
>
> Article 16. Nationals comprise:
>
> 1. Persons born in the territory of Nicaragua. Children of foreigners in the diplomatic service, foreign officials in the service of international organizations or dispatched by their government to perform work in Nicaragua shall be excepted, unless they opt for Nicaraguan nationality.
>
> 2. Children born to a Nicaraguan father or mother.
>
> 3. Children born abroad to a father or mother who were originally Nicaraguan, provided they apply for nationality upon attaining the age of majority or emancipation.
>
> 4. Infants of unknown parents found in the territory of Nicaragua, without prejudice to the effects of their filiation once it becomes known.
>
> 5. Children born to foreign parents on board Nicaraguan aircraft and ships, provided they apply for Nicaraguan nationality.
>
> Article 17. Persons of Central American origin have the right to opt for Nicaraguan nationality without renouncing their nationality and may apply to the competent authority when they are resident in Nicaragua.
>
> Article 18. The National Assembly may confer Nicaraguan nationality on foreigners who have distinguished themselves by particularly meritorious service to Nicaragua.
>
> Article 19. Foreigners may be nationalized, once they have renounced their nationality, by applying to the competent authority, provided they fulfil the requirements and conditions established by the relevant laws.

Article 20. No Nicaraguan may be deprived of nationality unless he deliberately acquires another nationality; nor shall Nicaraguan nationality be lost when nationality of another Central American country is acquired, or that of a country with which a dual nationality agreement has been concluded.

Article 21. The acquisition, loss and recovery of nationality shall be governed by the law.

Article 22. In cases of dual nationality the procedures established by treaties and the principle of reciprocity shall apply."

40. In accordance with the Nationality Act of 25 June 1992, published as Act No. 149 in La Gaceta No. 124 of 30 June 1992, the granting, loss and recovery of Nicaraguan nationality shall be decided by the Ministry of the Interior through the Directorate for Migration and Aliens, once the conditions stipulated in the Act have been fulfilled.

41. In Nicaragua there are no restrictions on movement to public places; in this connection the Constitution provides as follows:

"Article 31. Nicaraguans shall have the right to move freely, to take up residence in any part of the national territory and freely to enter or leave the country."

42. The guarantees provided for in article 5 of the Convention with respect to equal treatment before tribunals and government officials are contained in the following articles of the Constitution:

"Article 33. No one shall be subjected to arbitrary arrest and/or imprisonment, or deprived of liberty, except on such grounds and in accordance with such procedures as are established by the law.

Consequently:

1. Arrests may be made only by virtue of a written warrant issued by a competent judge or authorities with powers expressly conferred by law, except in cases of flagrante delicto.

2. Anyone who is arrested shall have the right:

2.1 To be informed promptly and in detail, in a language or tongue which he understands, of the reasons for his arrest and the charge against him; to have his family informed of his arrest; and to be treated with the respect due to the inherent dignity of the human person.

2.2 To be brought before the authority expressly empowered by the law within 72 hours at the latest.

3. No one who has served a sentence imposed on him shall continue to be detained once the order for his release has been signed by the competent authority.

4. Any case of unlawful detention shall incur the responsibility of the authority concerned.

5. The competent authorities shall ensure that persons awaiting trial and prisoners serving sentences are detained at different centres."

43. With further reference to the guarantees provided in the Constitution for persons awaiting trial, with the express intent of eliminating all forms of discrimination by the State or by government officials, articles 34 and 36 provide as follows:

"Article 34. All persons awaiting trial shall have the right, under equal conditions, to the following minimum guarantees:

1. To be presumed innocent until proved guilty according to law.

2. To be tried without delay by a competent court established by law.

3. Not to be removed from the jurisdiction of a competent judge, except in the cases specified in this Constitution and in the law.

4. To have the right of appearance and the right to legal assistance from the start of the proceedings and to have adequate time and facilities to prepare their defence.

5. To be assigned legal assistance upon first appearing if they have not appointed Counsel themselves; or, failing this, to be assigned legal assistance by judicial edict.

Persons awaiting trial shall have the right to communicate freely and in private with their defence counsel.

6. To be assisted free of charge by an interpreter if they do not understand or do not speak the language used by the court.

7. Not to be compelled to testify against themselves, their spouse or partner in a stable union, or relatives up to the fourth degree of consanguinity or second degree of affinity, or to confess guilt.

8. To be acquitted or convicted, in all of the competent instances, in accordance with the terms of the law.

9. To appeal to a higher court for review of their case when convicted for any criminal offence; and not to be tried again for an offence for which they have been finally convicted or acquitted.

10. Not to be tried or convicted for any act or omission which, was not already expressly and unequivocally qualified in the law as punishable, at the time it was committed or to receive a penalty not provided for by law.

Criminal proceedings shall be public, but in exceptional cases the press and the general public may be excluded in the interests of morality, public order or national security.

Article 36. Everyone has the right to respect for his physical, mental and moral integrity. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Violation of this right constitutes an offence and shall be punishable by law."

44. The prohibition of slavery is set forth in article 40 of the Constitution:

"Article 40. No one shall be subjected to servitude. Slavery and slave trade of any kind shall be prohibited in all their forms."

45. There is no imprisonment for civil debt (art. 41 of the Constitution); however, an exception is made to this principle under our criminal law where debts arise from obligations for alimony. Failure to meet such obligations is punishable by prison sentences ranging from one month to two years (art. 225 of the Criminal Code). Under article 43 of the Constitution the extradition of Nicaraguan nationals is prohibited.

46. With regard to political rights, relevant articles to be found in the Constitution, include the following:

"Article 48. The unconditional equality of all Nicaraguans in the enjoyment of their political rights is recognized. In the exercise of these rights and in the fulfilment of their duties and responsibilities; there shall be absolute equality between men and women.

The State has an obligation to remove de facto obstacles impeding equality between Nicaraguans and their effective participation in the political, economic and social life of the country.

Article 50. Citizens shall have the right to take part, under conditions of equality, in the conduct of public affairs and in the government of the country. Effective participation by the people at the national and local levels shall be guaranteed by the law".

47. The principal social rights recognized by law include: the right to health (art. 59 of the Constitution). The State assumes an obligation for the preservation, conservation and reclamation of the environment and natural resources (art. 60 of the Constitution) and the right to social security is guaranteed (art. 61 of the Constitution). Article 62 provides that the State must take steps to establish programmes for the physical, psycho-social and occupational rehabilitation of the handicapped and for their employment.

48. Articles 66 to 68 establish the right to freedom of information:

"Article 66. Nicaraguans have the right to truthful information. This right includes the freedom to seek, receive and impart information and ideas, either orally, in writing, in the form of art, or through any other media of their choice.

Article 67. The right to impart information is a social responsibility and must be exercised in strict respect of the principles established in the Constitution. This right may not be subject to censorship, but is subject to the higher responsibilities established in the law."

49. The rights of the family are established in the following articles:

"Article 73. Family relations are based on respect, solidarity and absolute equality of rights and responsibilities between men and women. Parents must provide jointly, with equal rights and responsibilities, for the maintenance of the home and the complete education of their children. Children in turn have a duty to respect and assist their parents. These rights and duties shall be exercised in accordance with the legislation in this field.

Article 74. The State shall ensure special protection for the process of human reproduction.

Women shall receive special protection during pregnancy and shall be entitled to paid leave and adequate social security provision. Women shall not be denied employment on the grounds of pregnancy or dismissed during pregnancy or during the post-natal period, in conformity with the law.

Article 75. All children shall have equal rights. No discriminatory term shall be used in the designation of affiliation. In ordinary law, any provision or distinction that reduces or negates equality between children shall be invalid.

Article 77. The elderly shall be entitled to measures of protection by the family, society and the State."

50. Ten parties or unions registered with the Supreme Electoral Council participated in the 1990 elections; deputies from three of these parties were elected to represent the Atlantic Coast region, including three indigenous and two Creole representatives. Forty-five councillors were also elected for each region (RAAN and RAAS) as members of the two regional councils; the Autonomous Government of the North (RAAN) is headed by indigenous representatives and the Autonomous Government of the South (RAAS) by Creole representatives.

51. On 27 February 1994 elections were held for the first time in the Autonomous Regions of the Atlantic in our country, in an atmosphere of freedom and democracy and without any unwelcome incident. These elections, in which most of the country's political parties and people's constituency associations participated, took place with transparency and mass participation, in the presence of more than 150 Nicaraguan and foreign observers, the latter being sent by the United States, Sweden and other countries, as well as international bodies such as the Organization of American States and the United Nations.

52. The democratic Government of Mrs. Violeta Barrios de Chamorro has not only allocated financial resources annually for operating the autonomous

governments of the Autonomous Regions and improving social services in the Regions, but provides direct support, through the Nicaraguan Institute for Development of the Autonomous Regions, for the socio-economic rehabilitation and the strengthening of the autonomy of the peoples and communities in the Regions.

53. The Government of the Republic has arranged for the re-entry or repatriation of thousands of Miskitos, Sumus and Creoles into the national territory, from which they had fled to Honduras and Costa Rica. In cooperation with the United Nations, the Government implemented a programme of repatriation, food aid and help with housing and transport for all groups of indigenous and Creole families.

Article 6

54. The guarantees called for in article 6 of the Convention are set forth in article 45 of the Constitution and the Amparo Act or Act No. 49, published in La Gaceta, Diario Oficial No. 241 of 20 December 1988. Article 45 of the Constitution provides as follows:

> "Article 45. Individuals whose constitutional rights have been or are in danger of being violated may file a writ of habeas corpus or amparo (enforcement of constitutional rights), as appropriate, in accordance with the Amparo Act."

55. In pursuance of article 45 of the Constitution, the Amparo Act was established, providing for amparo in the constitutional administrative and criminal spheres. As regards amparo in the constitutional sphere, individuals may file an action of unconstitutionality in respect of a law; as regards administrative amparo, any State official may be sued for acts or omissions violating citizens' constitutional rights and in the criminal sphere, i.e. habeas corpus, amparo may be filed by any individual on behalf of a person unlawfully detained. The purpose of these remedies is to monitor the laws and acts by public officials in an effort to protect citizens from arbitrary or discriminatory acts.

56. Labour rights. Article 82 of the Constitution calls for equal pay for equal work with no discrimination whatsoever; the prohibition of attachment of the minimum wage except in cases where the wage-earner owes "maintenance" to his or her children or spouse; an eight-hour work day and social benefits such as bonuses, holidays, etc. Article 83 recognizes the right to strike and article 87 establishes trade-union freedoms. Article 87 reads as follows:

> "Article 87. There is complete trade-union freedom in Nicaragua. Workers may organize voluntarily into trade unions which shall be set up in accordance with the provisions of the law.
>
> No worker is obliged to belong to a particular trade union or to leave a union of which he is a member. There shall be full trade-union autonomy and respect for trade-union rights."

Article 7

57. In accordance with the provision of article 7 of the Convention and with particular reference to the indigenous and Creole peoples of the Atlantic Coast region of Nicaragua, the Constitution protects their forms of political and social organization, culture, language and natural resources.

58. There are indigenous organizations in the Atlantic Coast region of Nicaragua which defend the ethnic interests and promote the welfare of their communities, such as YATAMA (Yapti Tasba Masraka Nanih Aslatakanka), an ethnic and social organization which plays an active role in furthering the ethnic rights of the indigenous peoples of the region, and SUKAWALA (Sumu Wanaiki Kalpapakan Lani), which works on behalf of the Sumu people. These organizations maintain ongoing, harmonious relations with the governmental authorities and promote and support health, education and social development programmes on behalf of their communities. They also take part in programmes for the protection of the ecological and biological reserves in their territories in both Autonomous Regions.

59. In November 1993 the eleventh Inter-American Indian Congress was held in Nicaragua, with the participation of 16 countries that sent governmental and indigenous representatives; it was opened by President Violeta Barrios de Chamorro. Furthermore, Nicaragua is currently a member of the Governing Board of the Ibero-American Indigenous Fund based in La Paz, Bolivia.

60. Right to culture of the Atlantic Coast communities

A people's culture goes beyond its expression in the arts and literature; it also includes the relationships among its members and the values of the group as such. The current Political Constitution of Nicaragua has been a pioneer in the protection and recognition of the cultural contribution of the indigenous peoples and ethnic communities of the Atlantic Coast region to the nation's culture. The relevant articles of the Constitution read as follows:

> "Article 89 ... The communities of the Atlantic Coast region have the right to preserve and develop their cultural identity within the national unity ...
>
> Article 90. The communities of the Atlantic Coast region have the right to the free expression and preservation of their languages, art and culture. The development of their culture and values enriches the national culture. The State shall establish special programmes for the exercise of these rights.
>
> Article 91. The State has a duty to enact legislation aimed at promoting activities for ensuring that no Nicaraguan is discriminated against on grounds of language, culture or origin."

Language

Language is usually a people's most immediate form of cultural expression; it is a means of communication and philosophical identification. It is nearly impossible to speak of a culture without making reference to its

language. Consequently, as part of its protection of the culture of the ethnic communities of the Atlantic Coast region, the Nicaraguan Constitution protects the dissemination and development of their languages, in the following articles:

> "Article 11. Spanish is the official language of the State. The languages of the communities of the Atlantic Coast region of Nicaragua shall also be used officially in the cases specified by law.
>
> Article 121. The communities of the Atlantic Coast region shall have access in their region to education in their mother tongue, at the levels to be determined in accordance with national plans and programmes."

61. A Spanish-Miskito and Spanish-Sumu bilingual education programme has been initiated as a practical means of developing the rights to culture and language of the communities of the Atlantic Coast region of Nicaragua. Among the programmes implemented as measures to combat racial discrimination are the programmes in the Miskito, English and Sumu languages given by the Bluefields Indian and Caribbean University. The organization YATAMA has produced bilingual programmes on radio MISKUT in Puerto Cabezas, which broadcasts cultural and educational programmes for the indigenous population in the Miskito and English languages.

62. The Nicaraguan Institute for the Development of the Autonomous Regions (INDERA) finances a fellowship programme for university, polytechnic and secondary students in the Atlantic Coast region. It also sponsors an assistance programme for Atlantic Coast dwellers who visit Managua and require economic support for their activities in the capital.

63. As both a constitutional guarantee for criminal detainees and a measure to strengthen the use of the Atlantic Coast languages, the Political Constitution of Nicaragua stipulates the following:

> "Article 33 (2) (1). Anyone who is arrested has the right ... to be informed promptly and in detail, in a language which he understands, of the reasons for his arrest and the charge against him.
>
> Article 33 (6). Every detainee has the right ... to be assisted, free of charge, by an interpreter if he does not speak the language used by the court ..."

64. When members of the indigenous communities are tried, cultural, social and other factors in addition to language are taken into account for the purpose of ensuring appropriate administration of justice. One of these factors is the fact that the members of these communities are being tried within the framework of a dominant culture imposed through formal education.

65. A television station that broadcasts a regional news bulletin is currently operating in the town of Bluefields. The daily newspapers Barricada, La Prensa, Nuevo Diario and La Tribuna are available in the main towns of the Atlantic Coast region. In Bilwi (Puerto Cabezas) news is broadcast on radio MISKUT and CARIBE and, in Bluefields, La Voz del Atlantico, Radio Zinica and Punto Tres broadcast news bulletins. The magazines

Wani, Sunrise, El Seminario, La Información and La Autonomia, are also available, as well as radio programmes in English, Spanish and Miskito.

66. Communal lands and natural resources. In addition to their existence as a distinct group and their socio-political organization, the indigenous communities of the Atlantic Coast have a territorial right based on traditional usufruct and historical ownership. From time immemorial, community members and their ancestors have occupied and used agricultural land, woods and rivers under a land tenure system based on the traditional community organization pattern. Nicaraguan legislation generally follows the same lines:

> "Article 89 ... The State recognizes the communal forms of land ownership of the communities of the Atlantic Coast region. It also recognizes the enjoyment and use of the waters and woods on their communal lands.
>
> Article 180 ... The State guarantees these communities the use of their natural resources and the validity of their forms of communal ownership ..."

67. On the basis of provisions of the Constitution, article 11 (1) of the Autonomy Statute of the Atlantic Coast regions of Nicaragua states that the communities of the Atlantic Coast region have the "right ... to use and enjoy communal waters, woods and land within the framework of national development plans" and article 36 of the Statute states:

> "Article 36. Communal property consists of the lands, waters and woods that have traditionally belonged to the communities of the Atlantic Coast region ..."

68. The Nicaraguan Constitution and the Autonomy Statute describe a legal regime for the indigenous territories that is different from any other land ownership or tenure regime in the country. It is an ownership and communal usufruct regime that is largely based on historical factors related to the particular customs and values of the indigenous communities of the Atlantic Coast region. One of the special features of this regime is the inalienability of communal lands which, according to article 36 (1) of the Autonomy Statute, cannot be given, sold, seized or taxed and are not subject to a statute of limitations. This provision therefore ensures that indigenous lands will be kept intact for future generations.

Conclusions

69. With the entry into force of the Political Constitution of Nicaragua in 1987 and the promulgation of the Autonomy Statute of the Atlantic Coast regions of Nicaragua, the Atlantic Coast communities have the power to administer their region and participate in the control of their natural resources and their destiny. The indigenous and Creole peoples of the Atlantic Coast region of Nicaragua enjoy in the Nicaraguan legal order unprecedented guarantees that are consistent with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

70. The Government of Nicaragua is thus making every effort to comply with the articles of the Convention, in each and every one of their provisions, and ensuring that orders for judicial measures to be taken against any form of racial oppression or discrimination are enforced.

71. The Government of Nicaragua has committed itself to a special effort to meet the demands inherent in the rights of the indigenous peoples and other inhabitants of the Atlantic Coast region of Nicaragua and all the ethnic groups of Nicaragua, as its contribution to the complete eradication of hatred and discrimination.

ETHNIC COMPOSITION OF THE PEOPLES AND COMMUNITIES OF THE AUTONOMOUS REGIONS, UPDATED

PEOPLES AND COMMUNITIES	POPULATION	LOCATION
MESTIZOS	185 000	Communities adjacent to Boaco, Chontales, Jinotega and located near the Siuna, Rosita and Bonanza Mines. Others in the Tortuguero, Laguna de Perlas, etc.
MISKITOS	140 000	Communites between Cabo Gracias a Dios and Laguna de Perlas, Siuna, Rosita and Bonanza. The most characteristic are found in Rio Coco, Tasba Raya, Llano Sur and Llano Norte, Litoral Norte and Litoral Sur, Prinzapolka
CREOLES	30 000	Bluefields, Corns Island, Laguna de Perlas and Puerto Cabezas
SUMUS	10 000	Rio Bambana, Tungki, Pis Pis, Uly, Waspuk, Kwabul, Rio Bocay and Rio Prinzapolka
RAMAS	1 500	Rama Cay, Wiring Cay, Monkey Point, Cane Creak and Punta Gorda

Notes

1/ Data taken from the preamble to Act No. 28 promulgated in 1987.

2/ Right of protection against discrimination, art. 89; protection of languages, arts. 11, 90 and 121; culture, arts. 89, 90, 180; own forms of civil organization, art. 49; and of government, arts. 89, 180; protection of system of law, art. 89; natural resources and land, arts. 89, 90, 180.

3/ The Electoral Law was first published in La Gaceta, Diario Oficial, No. 167, of 19 October 1988. This law, as rearranged and amplified, was published in La Gaceta, No. 121, of 27 June 1989, with the titles Acts 43 and 56.